



Deputy National Taxpayer Advocate

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November 2, 2006

MEMORANDUM FOR TAXPAYER ADVOCATE SERVICE EMPLOYEES

FROM: Krystal Apelquist, Acting Director, Management Accountability, Policy, Strategy /s/

SUBJECT: Interim Guidance on TAS' Confidentiality Policy

The purpose of this memo is to issue guidance on TAS' policy on confidentiality policy.

1. **Source(s) of Authority:** IRC 7803
2. **Effect on Other Documents:** This guidance will be incorporated into IRM 13.1.5, by November 1, 2007.
3. **Contact:** Esther Thomas, Manager, Technical, Analysis, Guidance Group. The telephone number is listed on Outlook.
4. **Expiration Date:** November 1, 2007

Attachment

cc: Guidance material

CONFIDENTIALITY POLICY AND PROCEDURES
TAS Summer Symposium
July-August 2005

Background

Taxpayer Advocates play an important role in the protection of taxpayer rights and the promotion of taxpayer confidence in the integrity and accountability of the IRS. They work as ombudsman to resolve taxpayer problems and disputes between taxpayers and the IRS. To succeed, a Taxpayer Advocate must be viewed, both in perception and reality, as an independent and impartial voice for the taxpayer within the IRS. To promote such independence, each local office of the Taxpayer Advocate is required to maintain a separate telephone, facsimile, and electronic communication access, as well as a separate office address. Confidentiality plays an important role in promoting TAS's independence from the rest of the IRS.

Discretion Not to Disclose: IRC §7803(c)(4)(A)(iv)

The Internal Revenue Service Restructuring and Reform Act of 1998 (RRA '98) mandated that the Taxpayer Advocate Service be independent of the Internal Revenue Service and IRC §7803(c)(4)(A)(iv) provides that each Local Taxpayer Advocate, **"may, at the taxpayer advocate's discretion, not disclose to the Internal Revenue Service contact with, or information provided by, such taxpayer."**

The discretion not to disclose information to the IRS may also be exercised by Area Directors, the Director of Taxpayer Account Operations, the Deputy National Taxpayer Advocate (DNTA), and the National Taxpayer Advocate (NTA). Area Directors, the DNTA, or the NTA may also reverse a disclosure determination made by an LTA.

Although TAS will usually honor a taxpayer's request to keep information confidential, TAS is not required by IRC §7803(c)(4)(A)(iv) to honor such a request. TAS has policies in place that govern disclosure procedures, based on the type of taxpayer information that would be disclosed, and the reason for making the disclosure.

The discretion not to disclose information does not apply to requests for information from any agency other than the IRS. This means that requests from Treasury, TIGTA, GAO, the Department of Justice (DOJ), the United States Attorney's Office, or persons requesting information pursuant to the Freedom of Information Act are not subject to the confidentiality provision in IRC §7803. Counsel to the NTA should be consulted in connection with these requests.

Why Confidentiality is Important

Confidentiality encourages taxpayers to trust and seek help from TAS, and to freely communicate with TAS in order to resolve their problems. Confidentiality strengthens TAS's independence and neutrality within the IRS. Confidentiality, independence, and neutrality are the cornerstones of an effective ombudsman.

A promise of confidentiality allows taxpayers to speak openly to TAS without fear that the information they provide will be used to their detriment. Confidentiality enables taxpayers to freely engage in candid, informal discussions of their issues and concerns, which may enable TAS to better identify and resolve taxpayer problems.

Senator John Breaux of Louisiana explained the importance of TAS confidentiality as follows:

We are really trying to build some walls between the IRS and the Taxpayer Advocate and their work with the taxpayers, the American citizens of this country, to make sure that they, the taxpayers, know the person they are dealing with is independent, has their interests at heart, and doesn't have to go report to the Internal Revenue Service district director about what he or she has discussed or talked about with the taxpayer who is seeking assistance.... There will be someplace they can go, which will be independent of the IRS, which will have as their first, second, third, and last mission to help that taxpayer. They can be comfortable there will not be communication or sharing of information of their discussions with the Taxpayer Advocate with the Internal Revenue Service. I think this is a very important part of the bill that is before the Senate today.
Cong. Rec. S4239, S4240 (May 5, 1998) (Statement of Senator Breaux).

Communicating Confidentiality Rules to Taxpayers

In the first contact with a taxpayer or their representative, TAS personnel should explain the confidentiality rule of IRC §7803(c)(4)(A)(iv). TAS personnel should also communicate to taxpayers that generally TAS personnel will be communicating with IRS personnel in order to resolve the taxpayer's problem.

The following is an example of what should be communicated to taxpayers or their representatives in their first contact with TAS:

The Internal Revenue Code gives the Taxpayer Advocate Service the discretion not to disclose certain information to the IRS. In general, to provide you the assistance or relief you are requesting, I will likely have to disclose to the IRS information you provide. If you ask me not to disclose to the IRS what you tell me or the fact that you have contacted the Taxpayer Advocate Service, I will generally honor your request.

When TAS personnel need to expand the scope of what is disclosed to the IRS beyond what the taxpayer or the taxpayer's representative has agreed to, they should seek consent from the taxpayer or their representative.

Information Subject to Nondisclosure to the IRS

Information subject to nondisclosure under IRC §7803(c)(4)(A)(iv) includes:

- The fact that a taxpayer or their representative has contacted TAS.
- Information provided by a taxpayer or their representative to TAS.
- TAMIS information, notes, and internal TAS memos or analysis containing taxpayer-provided information or the identity of taxpayers that have contacted TAS.

Note: If the information comes to TAS from the taxpayer, TAS has discretion not to disclose. If, however, the same information comes to TAS from a third party, IRC §7803(c)(4)(A)(iv) does not apply.

Other Laws Relevant to TAS's Disclosure of Taxpayer Communications

IRC §6103 and the Privacy Act of 1974 (5 U.S.C. §552a) generally protect taxpayer returns and return information from disclosure, subject to statutory exceptions. See IRM 9.3.1 and IRM 11.3.14.

IRC §7214(a)(8) requires all Federal employees, who have knowledge or information of violations of the Internal Revenue laws, to report such violations in writing to the Secretary of the Treasury. (Treas. Reg. §301.7214-1 clarifies that the violation should be reported to the Commissioner.) Failure to report such violations may result in termination, fines, or imprisonment.

- The discretion not to disclose under IRC §7803(c)(4)(A)(iv) is not absolute and there are circumstances in which LTAs will be required to disclose taxpayer contact or taxpayer-provided information. The policies and procedures of the NTA for implementing IRC §7803(c)(4)(A)(iv) require the reporting of criminal violations and fraud committed under the internal revenue laws, consistent with IRC §7214(a)(8). See IRM 33.1.2.4.3.4.1(3).
- If a TAS employee believes that a taxpayer has committed a criminal or fraudulent violation of an internal revenue law and the taxpayer has declined to work with TAS to resolve the violation, the nonstandard disclosure procedures should be followed and the violation will be reported to the NTA for appropriate action.

The requirement to report criminal violations and acts of fraud arises when a taxpayer refuses to work with TAS to achieve compliance with the internal revenue laws.

Types of Disclosure to the IRS

Previous confidentiality presentations and courses explained the three categories of disclosure: emergency, standard, and nonstandard. Understanding the differences in these types of disclosure, and the procedures established for disclosure, is an important part of TAS's confidentiality policy.

Standard disclosure

Standard disclosure is the most frequent type of disclosure. The Case Advocate (CA) may disclose to the IRS only the information **necessary** in order for TAS to obtain the appropriate relief for a taxpayer. Not all information provided to TAS is necessary in resolving a taxpayer's case. Keep in mind the taxpayer's right to privacy and only disclose the relevant information.

Example: The taxpayer is requesting an audit reconsideration and the only way that TAS can assist that taxpayer is to provide other IRS employees with the information that the taxpayer has provided to TAS so the IRS can reevaluate the results of a prior audit and possibly make an adjustment to the taxpayer's account based upon the information. Standard disclosure may be made for that purpose, provided that the taxpayer has been informed that disclosure may be necessary to provide assistance and the taxpayer has not asked TAS to refrain from disclosing the information.

Emergency Disclosure

When the taxpayer is likely to be **immediately harmed** if the IRS does not take prompt action (e.g., release of levy) and TAS is **unable to contact** the taxpayer to obtain consent to disclose information to the IRS, the Case Advocate must request approval from the LTA for emergency disclosure of the information necessary to resolve the taxpayer's problem. Standard disclosure may not be available because the taxpayer requested assistance in writing and TAS is unable to reach the taxpayer.

Example: TAS receives a Form 911 containing a financial statement (Form 433A) and a letter, explaining that a wage levy is in place and that a paycheck is scheduled for levy next week. The taxpayer did not provide a phone number on the form, and the telephone directory does not contain a listing for the taxpayer. The only method available to contact the taxpayer is by correspondence. In this instance, there is likely to be an immediate harm to the taxpayer because of the levy scheduled for the following week. To avoid such harm, TAS needs to contact an Automated Collection System (ACS) employee to negotiate a release of the levy because TAS has no authority to release the levy. The Case Advocate should promptly recommend to the LTA that TAS reveal the financial statement information to ACS so TAS can negotiate release of the levy.

Nonstandard Disclosure

When no other type of disclosure to the IRS may be made (e.g., standard or emergency disclosure), but a taxpayer **declines** to take the steps necessary to come into compliance with federal tax laws, or the taxpayer has taken steps or threatened to take steps to **seriously harm someone**, the nonstandard disclosure process should be used.

Example: The taxpayer contacted TAS because his EITC refund is being held. The taxpayer has been working with Exam, but believes it has taken too long to get his refund. In discussions with the taxpayer, the Case Advocate learns that the taxpayer and his wife have both been filing as Head of Household and claiming the EITC on separate returns for the past five years. The Case Advocate informed the taxpayer of the filing requirements and asked the taxpayer to prepare an amended return. The taxpayer then declined further assistance from TAS. This is a nonstandard case because the taxpayer no longer wants assistance from TAS and has refused to file an amended return, which is required to be in compliance. The Case Advocate must elevate the nonstandard disclosure question to the LTA.

In such cases, TAS will evaluate the information using the Case Advocate Confidentiality Questionnaire and the Local Taxpayer Advocate Confidentiality Questionnaire to determine whether to disclose the information to the IRS. In making determinations about nonstandard disclosures, TAS will consider:

- (1) Whether such disclosure is necessary to prevent:
 - an obvious injustice,
 - a violation of law,
 - injury or serious harm to another person, including an IRS employee,
 - injury to the taxpayer's health or safety, or
 - serious harm to the public health, safety, or to the tax system, **and, if so,**
- (2) Whether, taking all the factors of the case into consideration, the need for such disclosure to the IRS **outweighs** the importance of protecting TAS's independence and maintaining the confidence of taxpayers in future cases that their communications with TAS will remain confidential.

Obtaining Advice from Counsel

TAS personnel can disclose taxpayer-provided information to IRS Counsel when it is seeking legal advice regarding that taxpayer, even if the taxpayer has not agreed to any disclosure. Disclosure to Counsel in these circumstances is not considered disclosure to the IRS within the meaning of IRC §7803(c)(4)(A)(iv). Further, Counsel cannot disclose to the IRS (including CI) any information subject to nondisclosure pursuant to IRC §7803(c)(4)(A)(iv) (including the identity of the taxpayer seeking TAS's assistance) that TAS discloses during these consultations. See IRM 33.1.2.4.3.4 and IRM 33.1.2.4.3.4.2(1).

When seeking legal advice, let IRS Counsel know that you are not disclosing taxpayer-provided information to the IRS and that Counsel should refrain from disclosing to any other function within the IRS any taxpayer-provided information, including the identity of the taxpayer seeking TAS's assistance. Be sure to explain to IRS Counsel the requirement of keeping the taxpayer's information confidential. See IRC §7803(c)(4)(A)(iv) and IRM 33.1.2.4.3.4.

Responding to Requests for Information

Case Advocates can make the decision regarding whether to disclose information to the IRS in connection with standard disclosures without prior approval. However, when the IRS requests information not subject to standard disclosure, Case Advocates should immediately notify the LTA, and follow procedures for potential emergency or nonstandard disclosure. Case Advocates who receive requests for information from non-IRS personnel (e.g., DOJ, TIGTA, GAO, etc.) should immediately advise the LTA, who will contact the Area Director. The Area Director will then contact Counsel to the NTA. Consultation with the Disclosure Officer may be appropriate in some cases. Case Advocates should never disclose tax information to non-IRS personnel without prior approval.

Handling a Nonstandard Disclosure Case

Case Advocates must complete a Case Advocate Confidentiality Questionnaire when they are in receipt of information which might warrant nonstandard disclosure to the IRS. The completed questionnaire should be forwarded to the LTA.

The LTA reviews the recommendation, completes the Local Taxpayer Advocate Confidentiality Questionnaire, and forwards the determination regarding disclosure or nondisclosure to the Area Director along with the Confidentiality Advisory Board Routing Slip. The Area Director ensures that the LTA's determination is fully developed in accordance with TAS's confidentiality procedures. The Area Director then forwards the recommendation regarding whether to disclose to the Chairperson of the Confidentiality Advisory Board for review prior to disclosing or not disclosing taxpayer-provided information.